

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN DOUGLAS NELSON,

Defendant-Appellant.

UNPUBLISHED

May 30, 1997

No. 174618

Recorder's Court

LC No. 93-13776

Before: White, P.J, and MacKenzie and E. R. Post*, JJ.

MEMORANDUM.

This case is being decided without oral argument pursuant to MCR 7.214(E). The purpose of a *Ginther* hearing is to hear witnesses and make factual determinations. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973). Here, the trial court made such findings, which are that defendant and Doug Stanislaw were not credible at the *Ginther* hearing, and that defendant's trial counsel's testimony was credible. Those findings are not clearly erroneous, and accordingly the assertion that defendant was deprived of the effective assistance of counsel by virtue of having presented a knowingly perjured defense must fail. The claim of a conflict of interest because trial counsel also represented witness Doug Stanislaw fails to establish an actual conflict of interest or any prejudice to defendant's defense arising therefrom, and accordingly fails to establish ineffective assistance of counsel. *People v LaFay*, 182 Mich App 528, 531; 452 NW2d 852 (1990). Inasmuch as the trial judge found, at the conclusion of the *Ginther* hearing, that justice was done, denial of defendant's motion for new trial under MCL 770.1 was not an abuse of the trial court's discretion.

Defendant's convictions are accordingly affirmed.

/s/ Helene N. White

/s/ Barbara B. MacKenzie

/s/ Edward R. Post

* Circuit judge, sitting on the Court of Appeals by assignment.